

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 23, 2000

GSBCA 15223-RATE

In the Matter of ALABAMA LIMOUSINE, INC.

Calvin Weis Blackburn, III, of Sirote & Permutt, Birmingham, AL, appearing for Claimant.

James F. Fitzgerald, Director, Audit Division, Office of Transportation and Property Management, Federal Supply Service, General Services Administration, Washington, DC, appearing for General Services Administration.

Col. Harry L. Dorsey, Staff Judge Advocate, Headquarters, Military Traffic Management Command, Department of the Army, Alexandria, VA, appearing for Department of Defense.

PER CURIAM.

Alabama Limousine, Inc. asks us to reconsider our decision of August 3, 2000, denying its claim that the Government is not entitled to a refund of the cost of passenger fare tickets the Government bought from the carrier but did not use. We deny the motion for reconsideration.

The motion was timely filed, contrary to a contention made by the Military Traffic Management Command (MTMC). A motion for reconsideration "must be received by the Board within 30 calendar days after the date the decision was issued" if the movant is located within the fifty states or the District of Columbia. Rule 307 (48 CFR 6103.7 (1999)). The thirtieth day after the date of our decision in this case was September 2, 2000. The Board's offices were closed on September 2, a Saturday, however. They did not reopen until the following Tuesday, September 5. Alabama Limousine filed its motion on that date. The Board follows the practice of federal courts that when a deadline for a filing occurs on a date on which the receiving office is not open, the period for filing extends to the next day on which the office is open. Cf. Rule 102(c) (48 CFR 6101.2(c)); Fed. R. Civ. P. 6(a). The filing on September 5 was therefore timely.

In asking for reconsideration, Alabama Limousine makes three arguments:

- (1) The contractual relationship between the Government and Alabama Limousine required the Government to seek refunds for unused passenger fare tickets within 30 days after purchase.
- (2) The GSA [General Services Administration] has not accounted for each ticket which it claims is due to be refunded.
- (3) The GSA's improper offsets threaten the financial viability of Alabama Limousine.

None of these arguments is cause for granting reconsideration.

We agree with MTMC as to the first of them: The contention is merely reargument of points already made, and as our Rule 307 states, this is not a sufficient ground for seeking reconsideration. Alabama Limousine maintained initially that its relationship with the Department of Defense (DoD) was governed by a tariff which the carrier had filed with the Interstate Commerce Commission. That tariff provided that any unused ticket was refundable only within thirty days of the date on which that ticket was purchased. The Board considered this argument and rejected it. We held that the relationship between the two parties was governed by the tender offered by Alabama Limousine to DoD, and accepted by that department, as well as the Government Transportation Requests (GTRs) through which the tickets were purchased. Neither the tender nor the regulations incorporated in the GTRs included a limitation on the time in which the Government could return unused tickets for refunds. In arguing now that the parties' relationship was based on provisions of the tariff as well as the tender and GTRs, the claimant is replowing infertile territory.

Alabama Limousine's request for an accounting of amounts owed by it to the Government is not a proper subject for reconsideration, either, since the claimant did not raise this issue previously. Indeed, under the terms of a settlement agreement between Alabama Limousine and GSA, this matter could not have been raised. The settlement agreement, finalized in November 1999, provided that Alabama Limousine would execute a promissory note for repayment (over a thirty-six month period) of the entire amount claimed by GSA, and the carrier did execute such a promissory note. The agreement also provided that neither the settlement nor the note precluded Alabama Limousine's "right to present additional evidence to GSA's Audit Division which may result in a reduction in the subject indebtedness and claim of overcharge, []or to challenge the underlying basis for the indebtedness in an appeal before the General Services Board of Contract Appeals or other appropriate forum." (If the Board or other forum ruled in Alabama Limousine's favor, GSA would have to return all money it had received from the carrier by offset and payment under the note.) Under the settlement agreement, then, Alabama Limousine could come before the Board only to "challenge the underlying basis for the indebtedness." In other words, it could question only GSA's entitlement to recover refunds of unused tickets. It could not, and did not, question the amount of recovery.

Alabama Limousine's third argument, that GSA's allegedly improper offsets threaten the financial viability of the carrier, is another contention being raised now for the first time. This assertion does not have any impact on the only issue which has ever been before us in this case -- whether the Government is entitled to recover from the carrier refunds of the cost

of tickets purchased but never used. The assertion consequently is not an appropriate justification for our reconsidering our decision in the case. GSA may wish to consider the argument as a reason for amending the terms of the promissory note. Whether it does or not, though, is not a matter for our review.